

ORDINANCE NO. 138

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF AN APPROXIMATE 36 ACRE TRACT OF LAND IN THE CITY OF BEE CAVE, TEXAS, WHICH LAND IS LOCATED AT 3544 S. RR 620 WHICH LAND IS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO ("PROPERTY"); APPROVING A CONCEPT PLAN AND DEVELOPMENT STANDARDS DESCRIBED IN THE MORNINGSIDES DEVELOPMENT AGREEMENT AND THE SECOND AND THIRD AMENDMENTS THERETO; WHICH AGREEMENTS ARE ATTACHED AS EXHIBITS "B", "C", AND "D"; APPROVING A "CONCEPT PLAN" ATTACHED TO EXHIBIT "D"; PROVIDING FOR SPECIAL DEVELOPMENT STANDARDS AND CONDITIONS, BUILDING ELEVATIONS; PROVIDING FOR FINDINGS OF FACT, SEVERABILITY, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the Owner of the land described in Exhibit "A" attached hereto (the "Property") has filed a petition for annexation of that land and has requested that the land be zoned Planned Development District with a base zoning of Single Family- Attached; and

WHEREAS, property annexed into the City is automatically zoned "Agriculture" until a specific zoning request is made; and

WHEREAS, Kenneth C. Margolis, Trustee, and the City executed a Development Agreement effective as of July 25, 2000 (the "Morningside Agreement") governing the development of approximately 36 acres of land located within the extraterritorial jurisdiction of the City, locally known as the Morningside PUD (hereinafter to be considered the "Morningside PDD") and more fully described in the Morningside Agreement;

WHEREAS, the Morningside Agreement was amended by a First Amendment to Development Agreement dated May 13, 2003 executed by the City and others, which First Amendment has fully terminated in accordance with its terms;

WHEREAS, The Morningside Agreement was amended by a Second Amendment dated April 21, 2009;

WHEREAS, Kenneth C. Margolis, Trustee conveyed all of his interest in the Morningside Tract and the Morningside Agreement to First Morningside Austin, LLC, a Texas limited liability company;

WHEREAS, First Morningside Austin and the City entered into a Third Amendment to the Morningside Agreement dated April 2, 2012;

WHEREAS, and the Morningside Agreement, the Second and Third Amendments thereto govern the development of the Property being zoned by this Ordinance;

WHEREAS, the notice as required by the City's Zoning Ordinance has been published in the official newspaper and given to adjacent property owners; and

WHEREAS, public hearings have been held by both the Planning and Zoning Commission and the City Council as required by law; and

WHEREAS, the development proposed by the zoning applicant complies with the current City Ordinances except as modified by the Morningside Agreement and the Second and Third Amendments, which Morningside Agreement and Second and Third Amendments are attached hereto as Exhibits, B, C and D respectively and are incorporated herein for all purposes; and

WHEREAS, any protest made against the proposed change of Zoning Classification has been duly considered by the Planning and Zoning Commission and the City Council; and

WHEREAS, Sec. 32.03.015 of the City Zoning Ordinance provides that the purpose of a Planned Development District is to provide for the development of land as an integral unit for single or mixed use in accordance with a Concept Plan that may include uses, regulations and other requirements that vary from the provisions of other zoning districts, and to encourage flexible and creative planning to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community; and

WHEREAS, the City finds that the developments standards described in the Exhibits B, C and D accomplish the purposes of a Planned Development District as required in Sec. 32.03.015;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEE CAVE, TEXAS:

SECTION 1. Findings of Fact. All of the above premises are hereby found to be true and correct legislative and factual findings of the City and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Amendment. That the City Zoning Ordinance and Map of the City of Bee Cave, Texas, be and the same are hereby, amended so as to grant a change of zoning from Agriculture to Planned Development District with base zoning of Single Family Attached for the Property as described in Exhibit "A".

SECTION 3. Development. That the Property shall be developed in compliance with this Ordinance, the Morningside Agreement and the Second and Third Amendments thereto, attached as Exhibits "B", "C" and "D" respectively and the terms and conditions of the City's Code of Ordinances, except as modified by Exhibits "B", "C" and "D".

SECTION 4. Concept Plan. That the Concept Plan for this Planned Development District which is attached as Exhibit "A" to the Third Amendment and which is made a part

hereof for all purposes is hereby approved for said Planned Development District as required by Chapter 32, of the Code of Ordinances of the City of Bee Cave, Texas. Any proposed use or development depicted on the Concept Plan shall not be deemed authorized or approved by the City of Bee Cave until a final site plan ("Site Plan") is approved for such use and/or development in accordance with the terms and conditions of Chapter 32 of the Code of Ordinances as same may be modified by Exhibits "B", "C" or "D" attached hereto. No further Amendments to the Morningside Agreement will be necessary and future changes or amendments to the Project will be accomplished through zoning ordinances amendments to this Ordinance.

SECTION 5. Uses. Only those uses specifically described in the Third Amendment, attached hereto as Exhibit "C", shall be authorized uses in accordance with the Concept Plan. Any other uses ordinarily allowed in a Single Family Attached District shall only be authorized if approved by the City in a subsequent amendment to the Concept Plan and this Ordinance, because of the less stringent set back requirements, the size of the facilities, the condo regime and the other favorable Development Standards afforded to this Project. The authority granted by this Ordinance is therefore specific to the Project that has been represented in the applicant's application and as depicted in the Concept Plan and the associated Morningside Agreement and the Second and Third Amendment.

SECTION 6. Amendments to Development Standards. All changes or expansions of uses authorized for the Project require an amendment to this Ordinance and to the Concept Plan. However, any changes in the Development Standards, not associated with a change in use, and that are approved by City Council in subsequent site plan or plat approvals shall not require an amendment to this Ordinance. In such cases, Developer shall provide City with updated and accurate Concept Plans reflecting such changes.

SECTION 7. Construction Traffic and Access. Heavy construction trucks, dump trucks, concrete trucks, trailers, bulldozers and similar heavy equipment shall not access the Project via Falconhead Blvd during construction of the Project. Phase I of the Project shall not be constructed until the completion of construction of Phase II and Phase III unless such access road is required to be constructed prior to completion of the Project by Lake Travis Fire and Rescue.

SECTION 8. Expiration. In the event that construction of the Project is not commenced and diligently pursued to completion prior to December 31, 2018, the Project authorized by this Ordinance shall terminate and the zoning for the Property shall become Single Family Attached. In such event, the Concept Plan and any other approvals associated with the Project shall terminate and be of no further force or effect.

SECTION 9. Severability. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjusted or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of Chapter 32, Zoning, of the City of Bee Cave Code of Ordinances and Map as a whole.

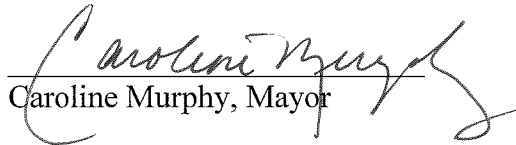
SECTION 10. Effective Date. That this Ordinance shall take effect immediately from

and after its passage.

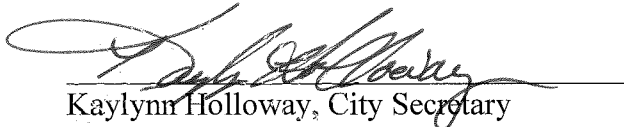
SECTION 11. Notice and Meeting Clause. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED by the City Council of the City of Bee Cave, Texas, on the 12th day of February, 2013.

CITY OF BEE CAVE, TEXAS


Caroline Murphy, Mayor

ATTEST:


Kaylynn Holloway, City Secretary

[SEAL]

APPROVED AS TO FORM:

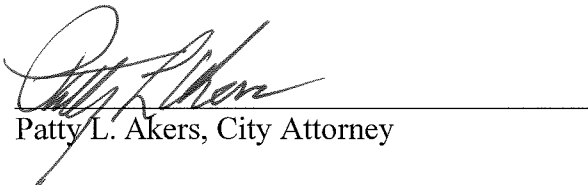

Patty L. Akers, City Attorney

EXHIBIT "A"
PROPERTY DESCRIPTION

Owner is the fee simple owner of that certain tract of land containing approximately 35.733 acres legally described as LOT 1, BLOCK A, MORNINGSIDE SUBDIVISION, a subdivision in Travis County, Texas, according to plat recorded at Document No. 200900139 of the Official Public Records of Travis County, Texas (the "Property"), also described as Travis Central Appraisal District Property ID Number 785933.

DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Development Agreement ("Agreement") is between the Village of Bee Cave, Texas ("the Village"), a general law municipality located in Travis County, Texas and Kenneth C. Margolis, Trustee ("Owner").

INTRODUCTION

Owner owns or controls approximately 36 acres of land (known as the "Land") located within the extraterritorial jurisdiction ("ETJ") of the Village locally known as Morningside PUD ("Morningside"). Morningside is more particularly described on Exhibit A. Morningside was originally approved as a planned unit development by the City of Austin, Texas on October 3, 1985 and was originally in that City's jurisdiction. A copy of the approved planned unit development is attached in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The City of Austin subsequently released Morningside from its ETJ. It presently is within the ETJ of the Village.

Owner and the Village wish to enter into this Agreement, provide an alternative to the Village's typical regulatory process for development, encourage innovative and comprehensive design, provide certainty of regulatory requirements throughout the term of this Agreement and ultimately result in annexation of Morningside to the Village.

Owner and the Village agree to work with each other in good faith to enhance and preserve the general area for the citizens of the Village and surrounding areas. Such cooperation shall include development of the Land in a manner which respects the environmental and aesthetic sensitivity of the Village.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the parties agree as follows.

ARTICLE I DEFINITIONS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement or in the Village's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Agreement: This Development Agreement between the Village of Bee Cave, Texas and Owner.

Village Administrator: The Village Administrator of the Village.

Effective Date of this Agreement: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

ARTICLE II MASTER DEVELOPMENT PLAN

Section 2.01 Phased Development. Owner may develop Morningside in phases. At the time of initial development, Owner may, in its discretion, submit a phasing plan which may be modified from time to time. The Village acknowledges that areas not then under active development may remain in use for agricultural lands or ranching purposes.

Section 2.02 PUD Plan; Approval of Exception. The Village hereby confirms its approval of the Morningside PUD Plan as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The Village acknowledges that the PUD Plan complies with the Village's Comprehensive Master Plan, as amended; approves the land uses, densities, building height, parking provisions, landscaping provisions, setbacks, impervious cover, exceptions, utility and roadway alignments and sizing and other matters shown on the PUD Plan, and confirms that the PUD Plan has been approved by all requisite Village departments, boards and commissions of the Village. It is understood that the applicant must file the necessary preliminary plats and final subdivision plats to comply with the PUD Plan and ordinances, as modified by this Agreement, and state law and that such applications will be approved by the Village. With respect to the Morningside PUD, the Owner agrees to comply with architectural standards and building materials that are set forth in the Village's proposed Comprehensive Master Plan, draft dated May, 2000. In addition, the Village approves in principle the development of the lands for a broader range of mixed uses, including residential, subject to the criteria outlined in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06).

Section 2.03 Road Dedication. Notwithstanding the Village's approval of the Morningside PUD as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), it is the intent of the Owner to work with the Village prior to site development, to ensure that the road pattern complements the Village's overall road plans. It is not presently the intent of the Owner to dedicate Sesame Street as shown in Exhibit B. Owner agrees, instead of developing Sesame Street as shown in Exhibit B, (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), to dedicate 50% of a new road elsewhere within Morningside to link adjacent properties, as long as the new road does not unreasonably adversely impact Owner's ability to develop Morningside for the intended purpose and the overall developable area of Morningside is not reduced from that shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and described in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06). The exact alignment of any new road will be determined through discussions with Village staff and/or Board or Alderman prior to submission of the final plat, neither of which shall unreasonably withhold their approval.

Section 2.04 Review Process. The Village acknowledges that Owner may elect to proceed with the development of Morningside within a compressed time schedule, and that efficient Village reviews are necessary for the effective implementation of Owner's development program. Therefore, the Village agrees that it will review and respond with substantive comments or approval to all construction and development applications and any requests for approvals under this Agreement within the shorter of sixty (60) days or any time frames established by any statutory or internal Village timeframes for development reviews which may be extended for a reasonable time under extraordinary circumstances beyond the control of the Village. If the Village fails to respond to an application within such time frame, the application will be deemed to have been approved as submitted unless beyond the control of the Village. The Village further agrees that if, at any time, Owner believes that an impasse has been reached with the Village staff on any development issue affecting Morningside, Owner may immediately appeal to the Village Administrator for a resolution and that the Village Administrator's decision is immediately appealable to the Village Board of Alderman at its next regularly scheduled Village Board of Alderman meeting. The Village will post the items in a timely manner in accordance with applicable law.

Section 2.05 Term of Approvals. The PUD Plan will be effective for the term of this Agreement, including any renewals as provided by Section 5.01.

Section 2.06 Amendments. Modifications to the PUD Plan may become desirable due to changes in market conditions or other factors. Owner may make minor changes to the PUD Plan upon written notification to the Village Administrator. Minor changes shall include: adjustments to the location of public roads, buildings, driveways and parking areas, or lot lines; adjustments to the number of stories, as long as the 4 story limit is not exceeded; or adjustments to the relative mix of office and retail square footages, as long as the total building square footage does not exceed 362,100 sq. ft. and as long as the total impervious cover is 35% or less of the total site area of Morningside. In the event of a major amendment, or the introduction of residential uses, the development criteria shall be as stated in Exhibit C and the revised plan shall require approval by the Village Board of Alderman, which approval will not be unreasonably withheld or delayed.

Section 2.07 Building Code Compliance. Permanent structures constructed within Morningside shall comply with the Southern Building Code adopted by the Village. Such code as it applies to Morningside shall be limited to health and safety issues and shall apply uniformly to all other property within the corporate limits of the Village. The Village shall provide timely inspections and shall provide adequate staff and resources so as not to unreasonably delay any construction activities within Morningside.

Section 2.08 Prohibited Uses. Unless authorized by specific action of the Board of Alderman, the industrial uses outlined in Section 3.17.4 of the Village Zoning Ordinance, as such ordinance exists on the Effective Date shall be prohibited.

Section 2.09 Easements and Rights-of-Way. The Village's Comprehensive Master Plan, now in the process of planning and adoption, provides for a hiking and jogging trail through the Land, as shown on Exhibit D. When the Village is ready to construct the hiking and jogging trail Owner will provide an easement to the Village, in the approximate location shown on Exhibit D, in a form reasonably satisfactory to the Village's Attorney. The easement shall contain language by which the Village shall assume all responsibility for claims, damages or causes of action of any nature arising from the easement and shall require the Village to maintain the easement. The use of the easement shall be limited to pedestrian uses and shall prohibit motorized vehicles. The location of the easement on Exhibit D is conceptual only and its exact location shall be determined at the time of final plat approval. The exact location of the connecting points of the easement with adjacent properties shall be determined through discussion between the Owner, the Village and property owners to the north and south. The easement shall have a maximum width of ten (10) feet, unless the terrain is such that more than ten (10) feet is required for a reasonably useful trail, in which case the parties will use good faith to agree on a wider easement as necessary to accomplish the intended purposes. The cost of preparation of the easements, including its metes and bounds description, shall be borne by the Village.

ARTICLE III ANNEXATION

Section 3.01 Annexation.

a. Owner agrees to petition for annexation of the Land when the Land becomes contiguous to the Village, or when the first building permit for a structure on the Land is issued, whichever occurs last. Simultaneously, with such annexation, the subject lands shall be zoned to permit the mixed land uses as approved. The Village shall not alter such zoning or such zoning classification as it applies to the Land during the term of this Agreement, without the written consent of Owner or its successors or assigns.

b. Contemporaneously with the annexation by the Village, the Village will zone any undeveloped property on the subject lands consistently with the land uses as approved and will zone all developed property consistently with the land uses in existence on the date of the annexation as shown on the approved Plan.

ARTICLE IV AUTHORITY AND VESTING OF RIGHTS

Section 4.01 Authority. This Agreement is entered into, in part, under the statutory authority of Section 42.044 of the Texas Local Government Code, "Creation of Industrial District in Extraterritorial Jurisdiction", which authorizes the Village to make written contracts with the owners of land within an industrial district, establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. In accordance with the authority granted to the Village under Section 42.044, Texas Local Government Code, the Village hereby designates the Morningside as an industrial district, which includes not only industrial uses, but also areas in which tourist-related businesses and facilities will be located. The parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of Morningside not presently in the Village's corporate limits as provided in this Agreement; authorize certain land uses and development with Morningside; provide for the uniform review and approval of plats and development plans for Morningside; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning after annexation of Morningside.

Section 4.02 Vesting of Rights. This Agreement constitutes an application by Owner for the subdivision and development of Morningside, and initiates the subdivision and development permit process for Morningside. The Village acknowledges that Owner has vested authority to develop Morningside in accordance with this Agreement. It is the intent of the Village and Owner that these vested development rights include the character of land uses, the number of square feet or living unit equivalents, the general location of roadways, the design standards for streets and roadways, and development of Morningside in accordance with the standards and criteria set forth in this Agreement, and only the Village ordinances in existence as

of June 13, 2000, as set out in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06), unless otherwise expressly set forth in this Agreement]. In the event of a conflict between this Agreement and the Village's ordinances or requirements, the terms of this Agreement shall prevail.

Section 4.03 Landowner's Right to Continue Development. In consideration of Owner's agreements, the Village agrees that it will not, during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within The Project or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within Morningside. The preceding sentence does not apply to temporary moratoriums uniformly imposed throughout the Village due to an emergency constituting imminent threat to the public health or safety, provided that such a moratorium will continue only during the duration of the emergency.

ARTICLE V TERM, ASSIGNMENT AND REMEDIES

Section 5.01 Term. The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the Village and Owner. Upon the expiration of fifteen (15) years, this Agreement may be extended, at Owner's request, with Village Board of Alderman approval, for up to one successive five-year period.

Section 5.02 Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the Village and Owner or may be terminated or amended only as to a portion of Morningside by the mutual written consent of the Village, the owners of the portion of the Land affected by the amendment or termination and Owner.

Section 5.03 Assignment.

a. This Agreement, and the rights of Owner, in whole or in part, may be assigned by Owner to a subsequent developer of all or a portion of Morningside upon forty-five (45) days written notice to the Village. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee.

b. If Owner assigns its rights and obligations as to a portion of Morningside, then the rights and obligations of any assignee and Owner will be severable, and Owner will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the Village may pursue all remedies against that nonperforming developer, but will

not impede development activities of any performing developer as a result of that nonperformance.

c. This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases any portion of Morningside.

d. Upon Owner's request and at Owner's expense and subject to Village's approval, Village and Owner may elect to seek legislative validation of this Agreement and statutory authorization to extend the term of this Agreement beyond fifteen (15) years.

Section 5.04 Remedies.

a. If the Village defaults under this Agreement, Owner may enforce this Agreement by seeking a writ of mandamus from a Travis County District Court, or may give notice setting forth the event of default ("Notice") to the Village. In addition, if the Village fails to cure any alleged default within forty-five (45) days from the date the Village receives the Notice, Owner may terminate this Agreement by providing written notice to the Village as to all of the Land owned by Owner, or as to the portion of Morningside affected by the default and/or Owner may pursue any injunctive relief from a court or proper jurisdiction.

b. If Owner defaults under this Agreement, the Village shall give Notice to Owner. If Owner fails to commence the cure of an alleged default specified in the Notice within a reasonable period of time, not less than forty-five (45) days, after the date of the Notice, and thereafter to diligently pursue such cure to completion, the Village may terminate this Agreement or seek injunctive relief from a court of proper jurisdiction.

c. Each party waives any action for damages against the other except for the recovery of attorneys' fees, as per subparagraph d below.

d. If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

Section 5.05 Cooperation.

a. The Village and Owner each agree to cooperate with each other as may be reasonably necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably necessary.

b. The Village agrees to cooperate with Owner at Owner's expense, in connection with any waivers, permits or approvals Owner may need or desire from the City of Austin, Travis County, TNRCC, United States Fish & Wildlife Service or any other regulatory authority in order to carry out the Plan.

c. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Owner and the Village agree to cooperate in the

defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement. Each party shall pay their own expenses and attorney's fees.

d. Owner or the Village may initiate mediation on any issues in dispute and the other party shall participate in good faith. The cost of mediation shall be a joint expense.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01 **Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Village:	Village of Bee Cave 13333-A Hwy. 71 West Bee Cave, Texas 78738 Attn: Village Administrator
With Required Copy to:	Mike Willatt Village Attorney 2001 N. Lamar Austin, TX 78705
Owner:	Kenneth C. Margolis, Trustee c/o Goldeneye, Inc. 2000 West Loop South, Suite 1080 Houston, TX 77027 Attn: Barry Lewis
With Required Copy to:	David Armbrust Armbrust Brown & Davis, LLP 100 Congress Avenue, Suite 1300 Austin, TX 78701

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. Owner may, by giving at least five (5) days' written notice to the Village, designate additional parties to receive copies of notices under this Agreement.

Section 6.02 Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 6.03 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

Section 6.04 Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

Section 6.05 Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable Village ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

Section 6.06 Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday,

Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Section 6.07 Authority for Execution. The Village certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with Village ordinances and Comprehensive/Master Plan. Owner hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Owner.

Section 6.08 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A - Metes and Bounds Description

Exhibit B - Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)

Exhibit C - Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06

Exhibit D - Hike and Jogging Trail

The undersigned parties have executed this Agreement on the dates indicated below.

VILLAGE OF BEE CAVE

By: Caroline L. Murphy
Printed Name: Caroline L. Murphy
Title: Mayor
Date: 7-25-2000

ATTEST:

Sherry Mashburn
Printed Name: Sherry Mashburn
Title: Village Secretary

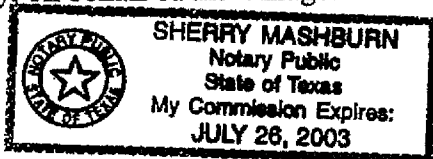
OWNER

Barry M. Lewis
Kenneth C. Margolis, Trustee
By: Barry M. Lewis, Authorized Agent
Date: 7-25-2000

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Caroline L. Murphy, Mayor of the Village of Bee Cave, Texas, a general law municipality, on behalf of the Village.

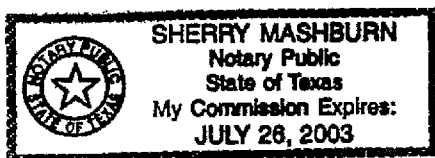


Sherry Mashburn
Notary Public Signature

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Barry M. Lewis on behalf of Kenneth C. Margolis, Trustee.



Sherry Mashburn
Notary Public Signature

EXHIBIT A

METES AND BOUNDS DESCRIPTION

TRACT ONE – 36.171 Acres

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND OUT OF THE A. STRAHLE SURVEY IN TRAVIS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 35.5 ACRE TRACT DESCRIBED IN A DEED TO LEE BLOCKER, ET. AL. OF RECORD IN VOLUME 2682, PAGE 599 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS AND A PORTION OF THAT CERTAIN 107.10 ACRE TRACT DESCRIBED IN A DEED TO LEE BLOCKER ET. AL., OF RECORD IN VOLUME 2683, PAGE 11 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID 36.171 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pipe found at the northwest corner of said 35.5 acre tract in the south line of a tract described in a deed to H.J. Spillman of record Volume 403, Page 341 of the Deed Records of Travis County, Texas, for the northwest corner and POINT OF BEGINNING hereof

THENCE, with the south line of said Spillman tract, and north line of said 35.5 acre tract the following 3 calls as found fenced and used upon the ground:

- 1) N 65° 34' 23" E for a distance of 1411.86 feet to an iron pin set at a fence post for an angle point
- 2) N 69° 22' 38" E for a distance of 252.41 feet to an iron pin set at a fence post for an angle point
- 3) N 66° 17' 11" E for a distance of 177.12 feet to an iron pin set at a fence corner post in the west R.O.W. line of Ranch Road 620 at the northeast corner of said 35.5 acre tract for the northeast corner hereof

THENCE, with the west R.O.W. line of R M 620 the following 2 calls:

- 1) S 31° 01' 00" E for a distance of 118.98 feet to a point of curve from which point a 1-1/4 inch iron pin found bears N 51° 09' W at a distance of 0.24 feet
- 2) with said curve to the left whose central angle is 21° 35' 39", radius is 931.47 feet and whose chord bears S 41° 48' 49" E for an arc distance of 351.06 feet and a chord distance of 348.99 feet to an iron pin set for the northerly southeast corner hereof

THENCE, with the south line hereof, S 66° 09' 47" W for a distance of 535.00 feet to an iron pin set for an ell corner hereof

THENCE, with an east line hereof, S 23° 50' 13" E at a distance of approximately 275 feet passing the south line of said 35.5 acres and north line of said 107.10 acre tract and continuing on for a total distance of 502.01 feet to a iron pin set for the southerly southeast corner hereof

THENCE, with the south line hereof, S 66° 09' 47" W for a distance of 1426.45 feet to a iron pin set in the west line of said 107.10 acre tract as found fenced and used upon the ground, and the east line of a tract of land described in a deed to R.H. Wilder, Jr. of record in Volume 3715, Page 573 of the Deed Records of Travis County, Texas for the southwest corner hereof

THENCE, with the west line of said 107.10 acre tract and east line of said Wilder tract as found fenced and used upon the ground, N 22° 44' 53" W for a distance of 100.09 feet to a iron pin set at a fence post

THENCE, continuing with the west line of said 107.10 acre tract, west line of said 35.5 acre tract, east line of said Wilder tract and east line of said Spillman tract, N 24° 06' 02" W at approximately 100 feet pass the northwest corner of said 107.10 acre tract and southwest corner of said 35.5 acre tract, at a distance of approximately 750 feet pass the northeast corner of said Wilder tract and a southeast corner of said Spillman tract and continuing on for a total distance of 851.95 feet to the POINT OF BEGINNING and containing 36.171 acres of land.

SAVE AND EXCEPT 0.449 acres as described below.

EXCEPTION – 0.449 Acres

Being 0.449 of one acre of land, more or less, out of and a part of that certain 36.171 acre tract of land lying in and being a part of the A. Strahle Survey, No. 594, Travis County, Texas, said 36.171 acres of land being the same land described in a deed from Frank W. Head, et ux, to Wiley McIlwain, dated March 5, 1984, recorded in Volume 8513, Page 381, Deed Records, Travis County, Texas; said 36.171 acre tract also being the same land described as Tract One in a Partition Deed recorded in Volume 8514, page 437, Deed Records, Travis County Texas; said 0.449 of one acre of land being more particularly described by metes and bounds as follows:

BEGINNING at a point in the existing southwest right of way line of RM Highway 620, said point being the Grantor's most easterly property corner, said point also being South 63° 55' 30.69" East a distance of 535.0 feet from Grantor's interior ell corner, said point is further identified as being 37.80 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 623+36.50;

THENCE NORTH 63° 55' 30.69" West a distance of 47.08 feet along Grantor's southeasterly property line to the point of intersection with the proposed right of way line of said Highway,

said point being 80.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 623+16.25;

THENCE along the proposed right of way line of said Highway, said right of way line being in a curve to the right of 1225.92 feet in radius, an arc length of 397.16 feet (the long chord of said curve bears North 42° 43' 34.87" West a distance of 395.43 feet) to a point, said point being 80.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 619+45.00;

THENCE NORTH 25° 21' 06.18" West a distance of 71.08 feet along the proposed right of way line of said Highway to the point of intersection with Grantor's Northwesterly property line, said point being 70.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 618+74.63;

THENCE NORTH 63° 52' 09.82" East a distance of 36.55 feet to a point, said point being Grantor's most Northerly property corner, said point also being in the existing Southwesterly right of way line of said Highway;

THENCE SOUTH 33° 26' 01.18" East a distance of 118.98 feet along the existing right of way line to a point;

THENCE along the existing right of way line of said Highway, said right of way line being in a curve to the left of 931.47 feet in radius, an arc length of 351.06 feet (the long chord of said curve bears South 44° 03' 05.31" East a distance of 348.99 feet) to the point of BEGINNING.

The above described parcel of land contains 0.449 of one acre of land, more or less.

EXHIBIT B

DEVELOPMENT CRITERIA: ORIGINAL MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN (OFFICE AND RETAIL)

Development of the Morningside PUD is permitted as set out on the attached site plan prepared by Espey, Huston & Associates, Inc., dated April 1985 and revised August 1987, which provides for the following development:

- Minimum Developable Area 20.84 Acres
- Total Developed Square Footage 362,100 sq. ft.
- Proposed Uses:
 - Office 321,300 sq. ft.
 - Retail 40,800 sq. ft.
- Parking 1207 spaces
- Maximum Buffer/Drainage Easement 15.33 acres

In addition to the development criteria set out on the Morningside site plan, the following criteria shall apply:

1. Architectural standards and building materials as set forth in Village's proposed Comprehensive Master Plan, draft dated May, 2000.
2. The only development ordinances that the developer shall have to comply with will be those that currently apply to the Village's ETJ, namely the development will comply with the Village's current subdivision, sign and water quality ordinances as they exist on June 13, 2000. In addition, Owner agrees to comply with the Lighting Ordinance, as it exists on June 13, 2000.

EXHIBIT C

DEVELOPMENT CRITERIA: MORNINGSIDE DEVELOPMENT WITH RESIDENTIAL OR OTHER MAJOR MODIFICATIONS TO THE MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN REQUIRING VILLAGE BOARD APPROVAL AS SET OUT IN SECTION 2.06

In addition to the uses contemplated by the original Morningside PUD (Exhibit B – Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), the development of a mixed-use community including townhouses, not to exceed 15 dwelling units per acre on the net 20.84 developable acres, shall be permitted. Office, retail, townhouse/condominium residential shall be permitted in any mix, so long as the total impervious cover does not exceed 35%.

The Land Use Equivalency chart on the following page illustrates the square footage and impervious cover percentages with the property being developed as office only, retail only, or townhouses only, purely for illustration purposes. It also illustrates the impact of a sample mixed-use development plan using 35% office, 15% retail and 50% townhouses with an impervious cover below the maximum 35% as contemplated above. This sample is presented for illustrative purposes only and the actual mix could vary.

The following criteria shall apply in the event that Morningside is developed to include residential uses, or if major changes are made to the PUD plan set out in Exhibit B as provided in section 2.06 of this agreement:

- Minimum Developable Area 20.84 Acres
- Maximum Buffer/Drainage Easement 15.33 acres
- Impervious cover up to, but not exceeding 35% of the total site area (including public roads)
- Uses can be distributed either in single use or multi-use buildings, such as retail first floor, office second floor.
- Size of buildings - maximum footprint of each separate structure: 45,000 sq. ft. for office use and 15, 000 sq. ft. for retail use and maximum height of four (4) stories.
- Connections between buildings, such as enclosed walkways or porte cocheres, shall be excluded from the calculation of the maximum building footprint. Such connections between buildings will not result in the buildings being considered as one structure or footprint.

- The Owner agrees to comply with the following Village ordinances as they exist on June 13, 2000, relating to a mixed use development as set out in this Exhibit:
 1. Article 9.1 Sign Regulations
 2. Article 3.3 Landscaping Requirements
 3. Article 10.1 Off-Street Parking
 4. Article 3.4 Outdoor Lighting
 5. Article 11.1 Nonpoint Source Pollution Control
 6. Ordinance 87-2 Subdivision Ordinance
- Architectural standards and building materials as set forth in the Village's proposed Comprehensive Master Plan, draft dated May 2000.

Sample and Use Equivalencies – For Illustrative Purposes Only				
Existing PUD				Impervious Cover (% of total area)
Building Sq. Ft.				
Office	321,300.0	sq. ft.		
Retail	40,800.0	sq. ft.		
Total	362,100.0	sq. ft.		
Coverage				
Building	107,800.0	sq. ft.	2.47	ac.
Parking, Structures & Driveway	439,541.7	sq. ft.	10.09	ac.
Total	547,231.7	sq. ft.	12.56	ac.
				34.7%
Same Sq. Ft. - Retail Only ⁽¹⁾				Impervious Cover (% of total area)
Building Sq. Ft.				
Retail (50% 1 story & 50% 2 story)	362,100.0	sq. ft.		
Total	362,100.0	sq. ft.		
Estimated Coverage				
Building	241,400.0	sq. ft.	5.5	ac.
Estimated Parking, Structures, Driveways	593,217.4	sq. ft.	13.6	ac.
Estimated Total	834,617.4	sq. ft.	19.2	ac.
				53.0%
Same Sq. Ft. - Professional Office Only ⁽²⁾				Impervious Cover (% of total area)
Building Sq. Ft.				
Office (2 story)	362,100.0	sq. ft.		
Total	362,100.0	sq. ft.		
Coverage				
Building	181,050.0	sq. ft.	4.16	ac.
Estimated Parking, Structures, Driveways	439,541.7	sq. ft.	10.09	ac.
Estimated Total	620,591.7	sq. ft.	14.25	ac.
				39.4%
Medium Density/Townhouses Only				Impervious Cover (% of total area)
Townhouses				
@ 15 units/acre ⁽³⁾	313	units		
Average unit size	2300	sq. ft. ⁽⁴⁾		
Coverage				
Buildings	359,950	sq. ft.	8.26	ac.
Estimated Parking, Driveways ⁽⁵⁾	113,982	sq. ft.	2.62	ac.
Estimated Total	473,932	sq. ft.	10.88	ac.
				30.1%
Sample Mixed Use Development				Impervious Cover (% of total area)
Office				
35% total land area	551,447.82	sq. ft.	12.66	ac.
at a coverage of	39.4%			
Total Office Coverage	217,270.44	sq. ft.	4.99	ac.
Parking & Driveways	153,884.46	sq. ft.	3.53	ac.
Building foot print	63,385.98	sq. ft.	1.46	ac.
2-story office	126,771.96	sq. ft.		
				13.79%
Retail				
15% of total land area	236,334.78	sq. ft.	5.43	ac.
at a coverage of	53.0%			
Total Retail Coverage	125,257.43	sq. ft.	2.88	ac.
Parking & Driveways	89,028.69	sq. ft.	2.04	ac.
Building Foot Print	36,228.75	sq. ft.	0.83	ac.
1 & 2 storey retail	54,343.13	sq. ft.		
				7.95%
Townhouses				
50% of total land area	630,226.08	sq. ft.	14.47	ac.
at a coverage of	30.0%			
Total Townhouse Coverage	189,067.82	sq. ft.	4.34	ac.
Parking & Driveways	45,471.42	sq. ft.	1.04	ac.
Building Foot Print	143,596.40	sq. ft.	3.30	ac.
No. of Units	125	units		
				12.00%
Total Mixed Use Coverage	531,595.70	sq. ft.	12.20	ac.
				33.74%
Total Mixed Use Development				
Office - 2-story	126,771.96	sq. ft.		
Retail - 50% 1-story & 50% 2-story	54,343.13	sq. ft.		
Townhouses - 125 units @ 2300 sq. ft./unit	287,500.00	sq. ft.		
Total	468,615.09	sq. ft.		

Notes:

⁽¹⁾ Parking required - 1629 parking spaces (1 space / 200 sq. ft. of retail use - assume 10% common areas)

⁽²⁾ Parking required - 1207 parking spaces (1 space / 300 sq. ft. of professional office)

⁽³⁾ Total developable area = 20.84 acres (36.17-15.33 buffer) @ 15 units/acre = 313 units

⁽⁴⁾ Assumes each unit contains a two-car garage

⁽⁵⁾ Assumes 1 space/unit visitor parking and 20' wide double loaded access driveway

EXHIBIT D

HIKE AND JOGGING TRAIL

(from 2000 Comprehensive Plan)

Exhibit C

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Second Amendment to Development Agreement (the "Amendment") is entered into between the **CITY OF BEE CAVE, TEXAS**, a general law municipality located in Travis County, Texas (the "Village") and **KENNETH C. MARGOLIS, TRUSTEE** ("Margolis") and ("Owner").

RECITALS

A. Margolis and the City executed a Development Agreement effective as of July 25, 2000 ("Morningside Agreement"), governing the development of approximately 36 acres of land located within the extraterritorial jurisdiction of the City, locally known as Morningside PUD and more fully described in the Morningside Agreement ("Morningside Tract).

B. Owner and the City executed a First Amendment effective as of May 13, 2003.

C. Owner and the City desire to amend the Morningside Agreement further to remove Section 2.03 from the Morningside Agreement and all references made to the location, status and specifications of Morningside Drive, any public roadway or right of way dedication.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. Amendment to Morningside Agreement. Section 2.03 of the Morningside Agreement and all references made to the location, status and specifications of Morningside Drive, any public roadway or right of way dedication are hereby deleted in their entirety, it being the intention of the parties that no public right of way shall be required from the Morningside Tract.

2. Effect of Amendment. Except as specifically provided in this Amendment, the terms of the Morningside Agreement continue to govern the rights and obligations of the parties, and all terms, except as amended by this Amendment, remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Morningside Agreement, this Amendment will control.

EXECUTED on the date or dates set forth below, to be effective on the date the last party signs.

CITY:

CITY OF BEE CAVE, TEXAS,
a general law municipality

By: Caroline Murphy
Printed Name: Caroline Murphy
Title: Mayor
Date: 4-21-09

ATTEST:
Kaylyn Holloway
Printed Name: Kaylyn Holloway
Title: City Secretary

OWNER:
Barry M. Lewis
By: BARRY M. LEWIS, AUTHORIZED AGENT
Kenneth C. Margolis, Trustee

Date: 4-17-09

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me Kaylyn Holloway (name), a Notary Public on this day personally appeared Caroline Murphy, Mayor of the City of Bee Cave, Texas, a general law municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of the City.

Given under my hand and seal of office this 21st day of April, A.D., 2009.

[Seal]



Notary Public's Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

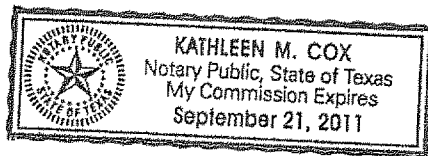
authorized
Agent for

Before me Kathleen M. Cox (name), a Notary Public on this day personally appeared Barry M. Lewis
Kenneth C. Margolis, Trustee, known to me to be the person whose name is subscribed to the
foregoing instrument and acknowledged to me that he executed the same for the purposes and
consideration therein expressed.

Given under my hand and seal of office this 17th day of April, 2009, A.D.,
2009.

[Seal]

Kathleen M. Cox
Notary Public's Signature



THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Third Amendment to Development Agreement (this "**Amendment**") is entered into between **THE CITY OF BEE CAVE, TEXAS**, a Texas municipal corporation (the "**City**"), and **FIRST MORNINGSIDE AUSTIN, LLC**, a Texas limited liability company ("**Owner**").

RECITALS

A. Kenneth C. Margolis, Trustee, and the City executed a Development Agreement effective as of July 25, 2000 (the "**Morningside Agreement**") governing the development of approximately 36 acres of land located within the extraterritorial jurisdiction of the City, locally known as Morningside PUD and more fully described in the Morningside Agreement (the "**Morningside Tract**");

B. The Morningside Agreement was amended by a First Amendment to Development Agreement dated May 13, 2003 executed by the City and others, which First Amendment has fully terminated in accordance with its terms;

C. The Morningside Agreement was amended by a Second Amendment dated April 21, 2009;

D. Kenneth C. Margolis, Trustee conveyed all of his interest in the Morningside Tract and the Morningside Agreement to Owner; and

E. Owner and the City desire to amend certain provisions of the Morningside Agreement in order to revise some of the development criteria for the Morningside Tract;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. All terms delineated with initial capital letters in this Amendment that are defined in the Morningside Agreement have the same meanings in this Amendment as in the Morningside Agreement. Other terms have the meanings commonly ascribed to them.

2. Notwithstanding anything in the Morningside Agreement to the contrary, the Morningside Agreement is hereby amended as follows in the event the Morningside Tract is developed in general conformity with the concept plan attached hereto as **Exhibit "A"** (the "**Plan**") while this Amendment is in full force and effect. Development in accordance with the Plan and this Amendment may be referred to herein as the "**Project**".

- A. Dwelling Units. The maximum number of residential units allowed on the Morningside Tract is limited to 382 units (determined by 11.52 units per 33.16 net developable acres of the Morningside Tract, as determined by General Note #3 of the Morningside Subdivision Final Plat, recorded as Document No. 200900139, Official Public Records of Travis County, Texas). The residential units developed on the Morningside Tract may include a maximum of (sixty-two) 62 detached residential units and three hundred twenty (320) attached residential units. Individual detached residential buildings will have a minimum set back of 10 feet from any other adjoining building.
- B. Building Types. Residential units may be developed in any mix of attached and detached structures. Detached residential units shall not exceed one (1) story in height. Attached residential structures may be developed in the following configuration:
 - (1) a maximum of sixteen (16) attached residential buildings no greater than four (4) stories in height, which may include carriage house style buildings;
 - (2) a maximum of twelve (12) detached garage buildings;
 - (3) a maximum of eight (8) carport structures;
 - (4) a maximum of three (3) clubhouse and recreational buildings; and
 - (5) additional ancillary structures, including but not limited to a sales office, maintenance shop, pool equipment structure, mail kiosk, shade pavilions or other facilities.
- C. Maximum Impervious Cover and Footprint. Impervious cover shall not exceed forty percent (40%) of the total acreage of the Morningside Tract. No individual structure may have a building footprint that exceeds fifteen thousand (15,000) square feet.
- D. Parking. In addition to uncovered surface parking, Morningside will include a total of three hundred twenty-eight (328) garage or covered parking spaces in the following configuration:

- (1) Each detached residential unit will be constructed with a two-car attached garage; and
- (2) The attached residential units will contain seventy-four (74) attached direct access one-car garage spaces, twenty (20) attached direct access two-car garage spaces, eighteen (18) attached non-direct access one-car garage spaces, forty-eight (48) detached one-car garage spaces, and forty-eight (48) detached covered spaces.

In no event shall the total number of parking spaces for Morningside be less than the minimum required by Article 10.1 Off Street Parking of the City's ordinances in effect as of the effective date of the Morningside Agreement. Parking on the streets adjacent to the detached residential units within the Project shall be prohibited; provided, however, that parking on the streets outside the minimum twenty-four (24) feet in width private rights-of-way may be provided through construction of guest parking spaces. The foregoing prohibition shall be expressly stated within the declaration of condominium regime or the restrictive covenants, as applicable. Parking on the streets adjacent to the attached residential structures, if outside the minimum twenty-four (24) feet in width private rights-of-way, is permitted.

E. Non-Point Source Pollution Control. Performance standards for pollution removal efficiencies shall equal or exceed the following:

- (1) ninety percent (90%) for total suspended solids (TSS) removal;
- (2) eighty percent (80%) for total phosphorous (TP) removal;
- (3) eighty percent (80%) for oil and grease (O&G) removal; and
- (4) any additional performance standards required by the existing Morningside Agreement for pollutants other than TSS, TP and O&G.

F. Building Code Compliance. Permanent structures constructed within Morningside shall comply with the health and safety requirements of the building codes adopted by the City as of the date of this Amendment and as amended from time to time. The term "health and safety requirements" shall mean building, fire, electrical, plumbing, or mechanical codes and regulations intended to prevent destruction of property or injury to persons. The City shall provide timely inspections and shall provide adequate staff and resources so as to not unreasonably delay any activities within Morningside.

- G. Hiking and Jogging Trail. Prior to completion of all improvements depicted on the Plan, Owner shall construct and dedicate to the City a concrete hiking and jogging trail between five (5) and ten (10) feet in width on the Morningside Tract in the approximate location specified in Section 2.09 and Exhibit D of the Morningside Agreement, at Owner's sole cost and expense, in accordance with the full accessibility and mobility standards and other requirements set forth in the City ordinances and as required by state and federal ADA requirements effective as of the date of construction. The exact location of the hiking and jogging trail shall be subject to the reasonable approval by the City in conjunction with the first Site Plan approval. In addition, Owner will contact adjacent landowners to determine the feasibility of connecting off-site trails to the trails located on the Morningside Project and will come back to the City Council with recommendation on how to implement connections with off-site trail systems.
- H. Streets. All streets constructed within the Morningside Tract shall be private, contain a width of at least twenty-four (24) feet, and comply with all applicable requirements promulgated by Travis County E.S.D. for ingress and egress of fire and emergency vehicles. The alignment of streets will be approved in conjunction with Site Plan approval in general accordance with the Plan and the requirements of Travis County E.S.D. The road dedication requirements of Section 2.03 of the Morningside Agreement are deleted. All streets shall comply with the City's construction standards (other than street width requirements) in effect on the date of this Amendment.
- I. Traffic Control Gates. Owner may elect to place ingress and egress traffic control gates within the Morningside Tract. Any gates shall be constructed and maintained so as to be kept in a fully functional condition for their intended purposes at all times, to easily accommodate all manner of emergency vehicles with coded electronic access provided to the City and emergency providers, and to include a manual override to be fully functional in case of system failure. In addition, if traffic control gates are utilized such traffic control gate configurations shall comply with the City's ordinances in effect on the date of this Amendment.
- J. Lighting and Signage. The development of the Morningside Tract will comply with all City ordinances regarding outdoor lighting and sign regulations effective as of the date of this Amendment and as

may be amended from time to time. The foregoing notwithstanding, outdoor lighting and signs constructed on the Morningside Tract within eighteen (18) months of the date of this Amendment shall comply with all City ordinances regarding outdoor lighting and sign regulations effective as of the date of this Amendment.

- K. Accessible Housing. The development of the Morningside Tract shall include a minimum of seven (7) attached residences constructed to satisfy full accessibility and mobility standards effective as of the date of this Amendment and set forth in City ordinances, the U.S. Department of Housing and Urban Development Fair Housing Accessibility Guidelines, the Americans With Disabilities Act, the Fair Housing Act, and the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly referred to as ANSI A117.1).
- L. Condominium Regime. A declaration of condominium regime for the entire Morningside Tract shall be filed in the Official Public Records of Travis County, Texas, prior to the completion of improvements depicted on the Plan and the conveyance of any condominium unit, other portion of the Morningside Tract, or any structure located thereon. Owner agrees to incorporate into its restrictive covenants or condo regime documents such restrictions or requirements as the City may reasonably require regarding public easements and improvements that serve the overall Project and as would otherwise normally be required by the City's subdivision ordinance in the form of a plat note. In addition, the City may require that public utility easements, drainage easements, water quality easements or other easements reasonably necessary to the Project as described in Paragraph M be conveyed by separate instrument to an applicable utility provider, or a property or condominium owners' association established for Morningside in conjunction with Site Plan approval.
- M. Maintenance. The construction or maintenance of any streets, bridges, culverts, utilities, drainage, water quality facilities, water detention facilities or other common areas within the Morningside Tract shall be the responsibility of the Owner or a property or condominium owners' association formed for Morningside, to the extent not accepted for maintenance by utility providers. The City shall not be responsible for the construction, operation or maintenance of such improvements.

- N. Certificates of Occupancy. No structure or condominium unit within the Morningside Tract may be conveyed to an owner in Morningside prior to the issuance of a certificate of occupancy by the City for such structure and the completion and approval by the City of all streets, bridges, culverts, utilities, drainage, water quality facilities and water detention facilities and any other facility or improvement intended to serve the Project as a whole and/or intended to serve the portion of the Project covered by Site Plan approval as described in Section P. The foregoing shall not prohibit Owner from conveying one or more condominium units to developers who intend to develop the Morningside Tract in accordance with the Morningside Agreement, as amended by this Amendment. Any conveyance to a subsequent developer shall include this provision in the land sales contract.
- O. Architectural Standards. In addition to architectural standards required by the Morningside Agreement, all residential buildings (both attached and detached) shall (i) utilize a minimum of sixty percent (60%) on each side of the structure and an overall minimum of seventy-five percent (75%) on the structure as a whole of masonry veneer, consisting of stone, stucco or brick; provided, however, that roofs, eaves, front entry returns, soffits, windows, doors, gables, garage doors, decorative trim, trim work and other limited portions of the elevations in which the use of masonry is impractical is not calculated in determining such 60% or 75% masonry requirement; (ii) utilize metal roof awnings as shading devices and decorative elements at locations determined by the project architect; (iii) utilize and further enhance these masonry and metal roof standards in the design and construction of the clubhouse and recreational buildings; and (iv) construct each carport structure with a pitched roof design and decorative architectural elements at the end of each carport structure. Architectural design elements and examples of construction for both attached and detached units as submitted in Owners' application for an amendment to the Morningside Agreement shall be used as the basis for the approval of architectural design and construction of the units substantially in accordance with such submitted design elements and examples. Owner shall submit final elevations for approval by the City at the time that a Site Plan is submitted for attached units and all associated structures such as those listed in paragraph B(5) and applicable templates that will be used for selection by purchasers for detached units.

- P. Site Plan Approval. The location of utility easements, drainage easements and facilities, water quality and detention easements and facility locations, building footprints and square footage calculations for all attached residential units and associated structures, the general location of detached units, non-point source pollution requirements and calculations demonstrating compliance with impervious cover requirements and treatment performance standards, trail locations, architectural elevations, irrigation fields, public access, common area or other easements and facilities intended to serve the Morningside Project as a whole, and condo regime documents and restrictive covenants, as applicable, shall be submitted as a whole for the reasonable approval by the City as part of its initial Site Plan review and approval in accordance with the applicable city ordinances and the performance standards described in this Agreement. Phased development is authorized through the initial and/or subsequent site plan applications and may be submitted for approval to allow the attached residential units and the detached residential units and associated streets and utilities, gated entry configuration, landscape plans, intended to serve such portion of the Project to be developed in one or more phases. Storm water detention facilities, water quality facilities and any other improvements intended to serve the Project as a whole shall be completed prior to the issuance of a Certificate of Occupancy.
- Q. Owner's Application. Owner's application, depictions and statements regarding its request for the amendment to the Morningside Development Agreement is attached hereto as **Exhibit "B"** and incorporated herein for purposes of defining and establishing Project requirements and developments standards substantially in accordance with the depictions in such application that are not otherwise inconsistent with this Amendment.

3. In the event that construction on the Project is not commenced within forty-eight (48) months from the date of this Amendment or in the event the Project is abandoned by written notice from all of the owners of the Morningside Tract to the City, this Amendment shall terminate and be of no further force or effect. Upon termination of this Amendment, all original terms, conditions and requirements of the Morningside Agreement shall govern the rights and obligations of the parties as if this Amendment had not occurred.

4. Except as specifically provided in this Amendment, the terms of the Morningside Agreement continue to govern the rights and obligations of the parties, and all terms of the Morningside Agreement, except as amended by this Amendment, remain in full force and effect. If there is any conflict or inconsistency between this

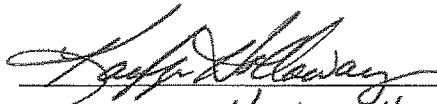
Amendment and the Morningside Agreement, this Amendment will control and modify the Morningside Agreement. Any projects other than the Project described herein and constructed on the Morningside Tract shall be governed by the provisions of the Morningside Agreement without this Amendment.

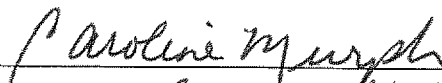
Executed on the date or dates set forth below, to be effective on the date the last party signs.

THE CITY:

THE CITY OF BEE CAVE, TEXAS, a Texas municipal corporation

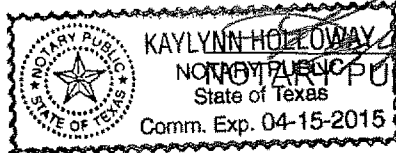
Attest:


Print Name: Kaylynn Holloway
Title: City Secretary

By: 
Print Name: Caroline Murphy
Title: Mayor
Dated: April 2, 2012

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 2nd day of April, 2012 by Caroline Murphy, Mayor of THE CITY OF BEE CAVE, TEXAS, a Texas municipal corporation, on behalf of said corporation.



OWNER:

FIRST MORNINGSIDE AUSTIN, LLC, a Texas
limited liability company

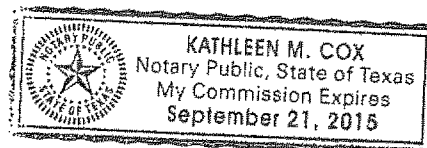
By: *Barry M. Lewis*
Barry M. Lewis, Manager

Dated: 3-29-, 2012

THE STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me this 29th day of
March, 2012 by **BARRY M. LEWIS**, Manager of **FIRST MORNINGSIDE
AUSTIN, LLC**, a Texas limited liability company, on behalf of said limited liability
company.

Kathleen M. Cox
NOTARY PUBLIC, State of Texas



OWNER:

FIRST MORNINGSIDE AUSTIN, LLC, a Texas
limited liability company

By: _____
Barry M. Lewis, Manager

Dated: _____, 2012

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

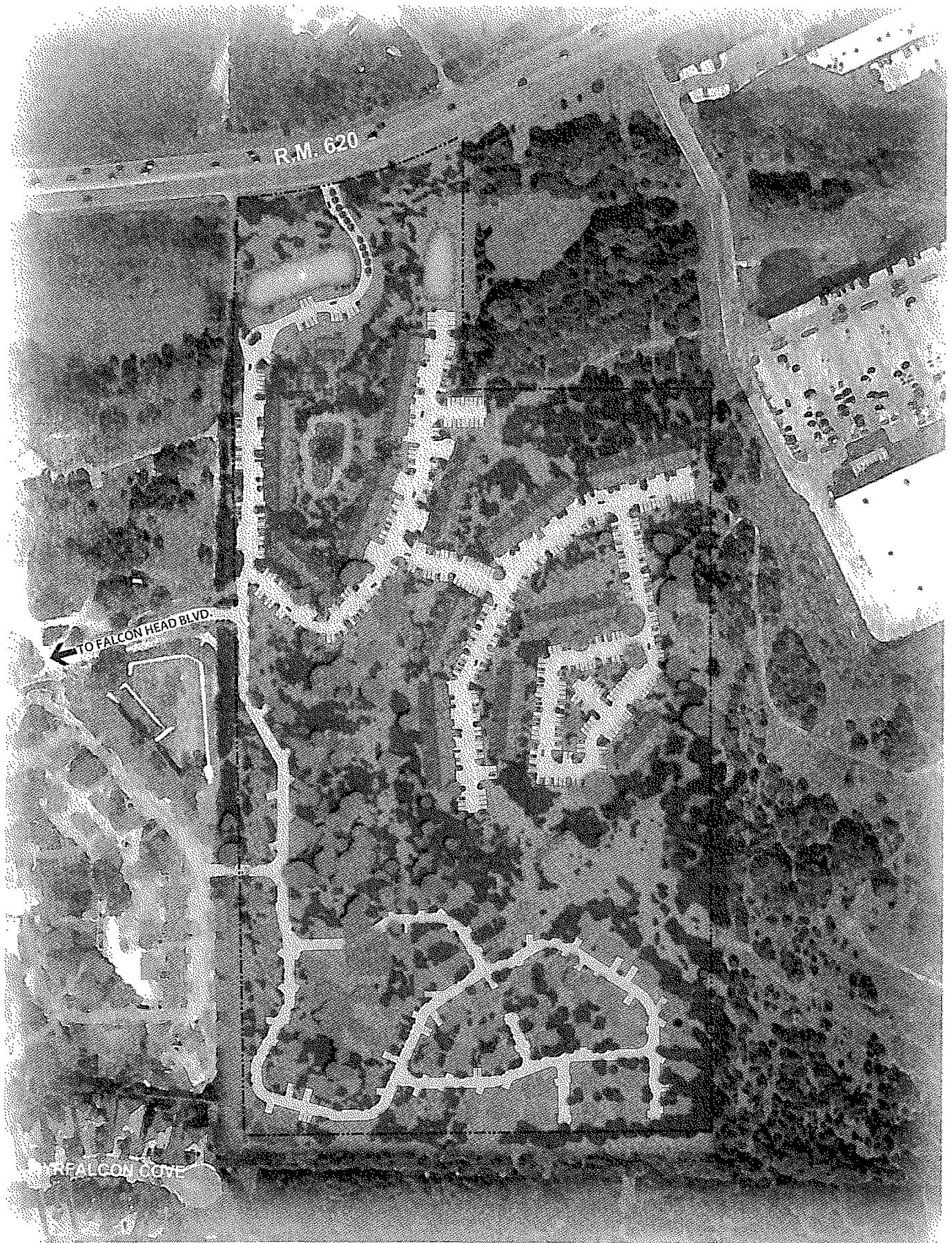
This instrument was acknowledged before me this _____ day of _____, 2012 by **BARRY M. LEWIS**, Manager of **FIRST MORNINGSIDE AUSTIN, LLC**, a Texas limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC, State of Texas

EXHIBIT "A"

THE PLAN

(see attached)



Morningside
development graphic


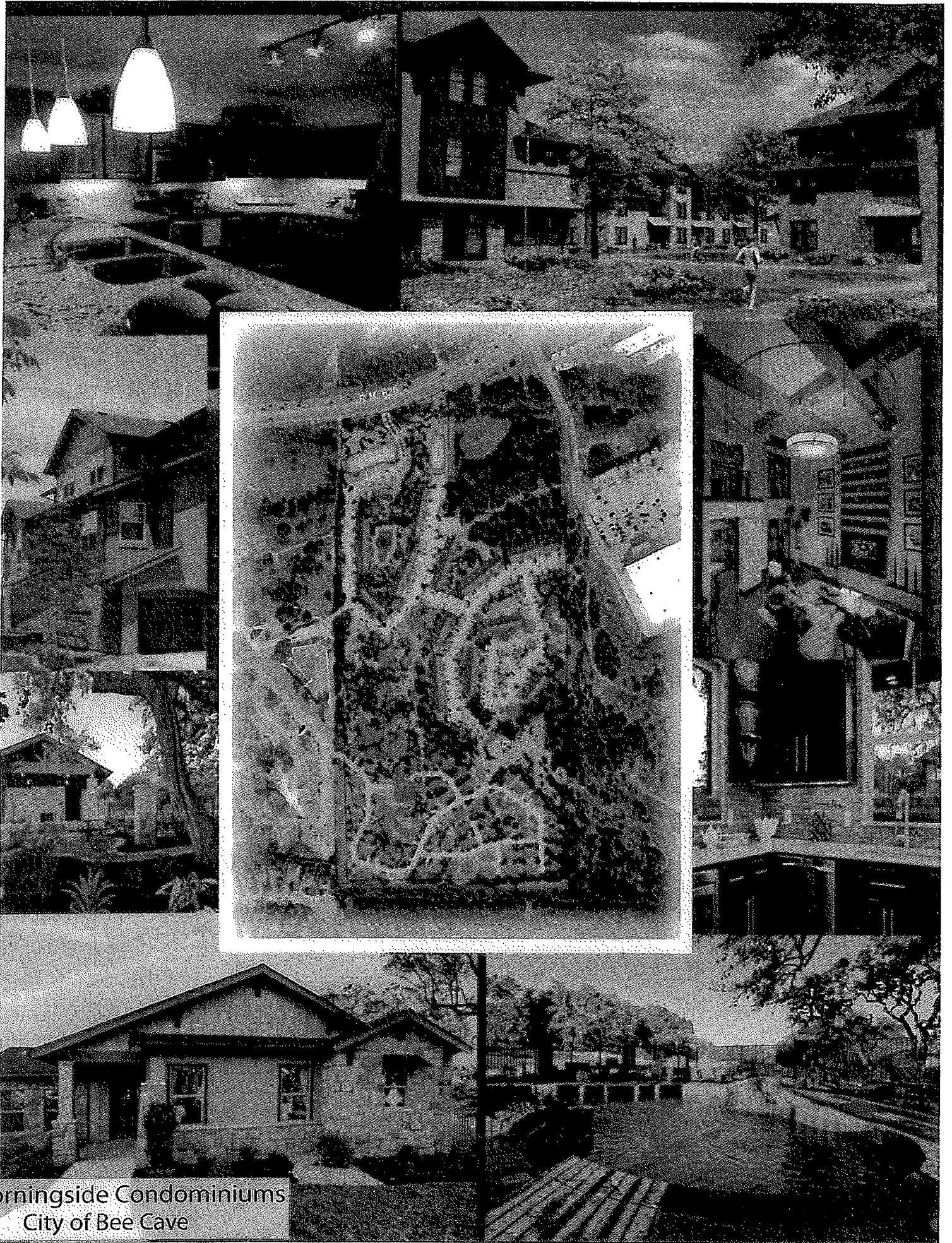
 Bury Partners



EXHIBIT "B"
THE APPLICATION

(see attached)



Morningside Condominiums
City of Bee Cave



GRAVES DOUGHERTY HEARON & MOODY

A PROFESSIONAL CORPORATION

John J. McKetta, III
512.480.5816
512.480.5816 (fax)
mmcketta@gdhm.com

MAILING ADDRESS:
P.O. Box 98
Austin, TX 78767-9998

September 27, 2011

Members of the Planning and Zoning Commission
of the City of Bee Cave

Members of the City Council
of the City of Bee Cave

Re: Morningside Subdivision

Ladies and Gentlemen:

For your convenient background information, this letter summarizes existing development rights for the 35.733-acre parcel known as the Morningside Subdivision, located south of the Falconwood Subdivision entrance on RR 620 in the Bee Cave E.T.J.

The property was purchased in 1984 by Kenneth C. Margolis, trustee, and is now owned by First Morningside Austin, LLC. Throughout that time, the owner's representative has been Barry Lewis.

On July 25, 2000, the owner and the (then) Village of Bee Cave entered into a 15-year development agreement. (The agreement was amended in 2003; but the amendment terminated in 2007 and is of no continuing force or effect.) Preliminary subdivision and final plat were approved by the Bee Cave City Council on April 28, 2009. This summary is not intended to vary from the specific terms of the agreement and the plat approval.

Under the development agreement and the approved final plat, the following is permitted on the property:

1. The property may be developed under ordinances and regulations in effect as of June 13, 2000. These ordinances include, without limitation, the following as in effect on June 13, 2000: sign regulations; landscaping requirements; off-street parking; outdoor lighting; nonpoint source pollution control; subdivision ordinance; and architectural standards and building materials.
2. The property may develop a mixed-use community with any mix (in such percentages as the owner may elect) of office, retail, townhouse/condominium residential, so long as the impervious cover does not exceed 35 percent.

Members of the Planning and Zoning Commission
of the City of Bee Cave
Members of the City Council
of the City of Bee Cave
September 27, 2011
Page 2

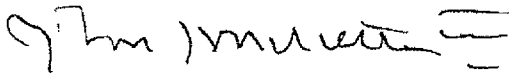
3. For residential uses, development of 15 units is permitted per net developable acre (or 497 units for the 33.16-acre developable area of the entire tract pursuant to plat notes 2(e) and 3).
4. The agreement does not restrict whether any of the uses (condominiums or townhomes or office or retail) are rented or sold to individual owners.

The owner has contracted to sell the eastern portion of the property to Embrey for development of 316 attached condominiums, and to sell the western portion to Ash Creek Homes for development of 57 detached condominiums (consistent with its adjacent Spillman Ridge development).

On September 1, 2011, the developers presented their concepts to the Mayor, the City Manager and the City Attorney, outlining development that can be accomplished within the existing development agreement and approved final plat. The City Attorney suggested the possibility of an amendment to the development agreement to define specific attributes of the proposed development. This amendment would include any modifications necessary or unique to the project, with the understanding that the owner may be willing to accept some greater restrictions than those that exist in the current approvals; provided that any amendment would become void if the two sales did not timely close.

The owner and the developers are appreciative of your consideration of the proposed development.

Sincerely,



John J. McKetta III

JJM:sm

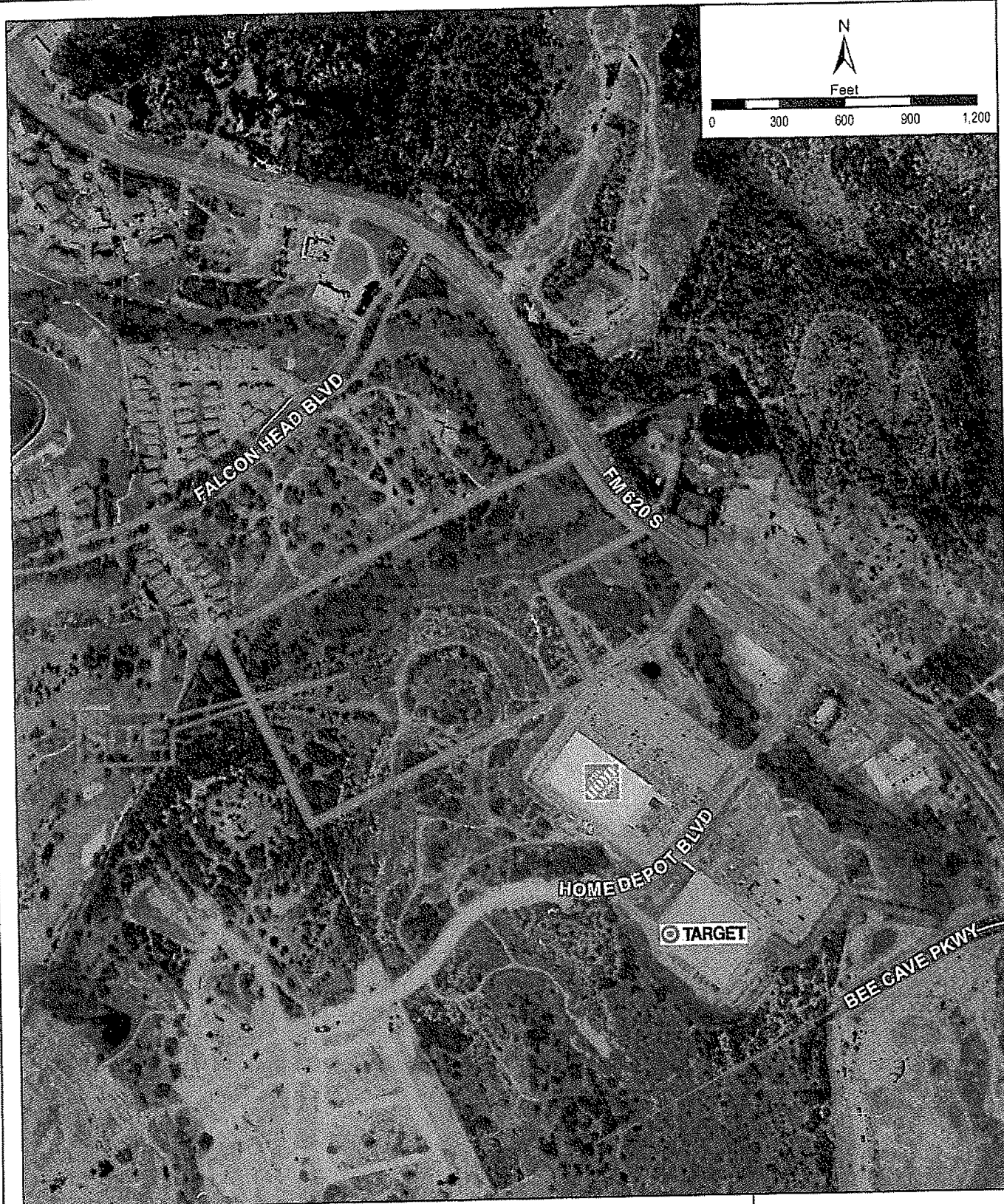
cc: Mr. Frank Salvato
Patricia Akers, Esq.

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Austin, Texas 78701
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EMBREY / ASH CREEK HOMES

**MORNINGSIDE CONDOMINIUMS
BEE CAVE, TEXAS**

**SITE LOCATION
MAP**

DATE: 09/26/2011

DRAWN BY: JEB

FILE: J:\BUSDEV\BEE CAVE\Morningside\...

PROJECT No: 101219-40-004

2

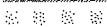


Morningside
development graphic

Bury Partners



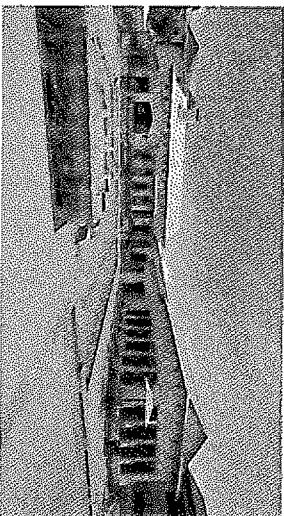
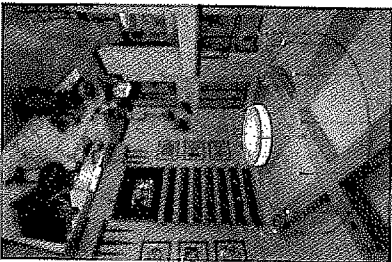
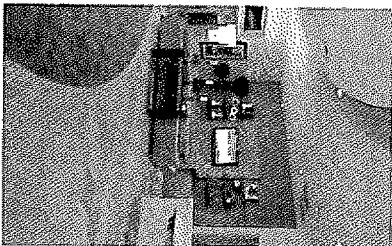
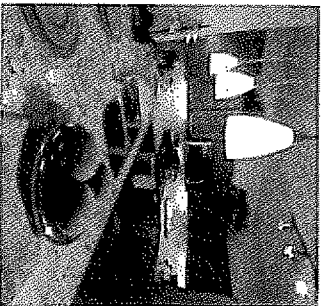
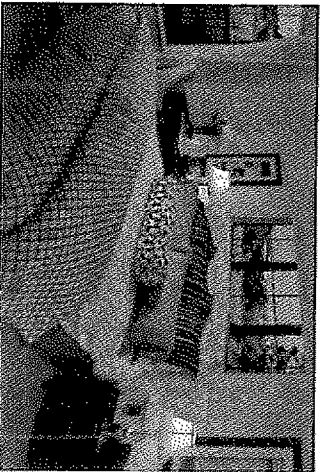
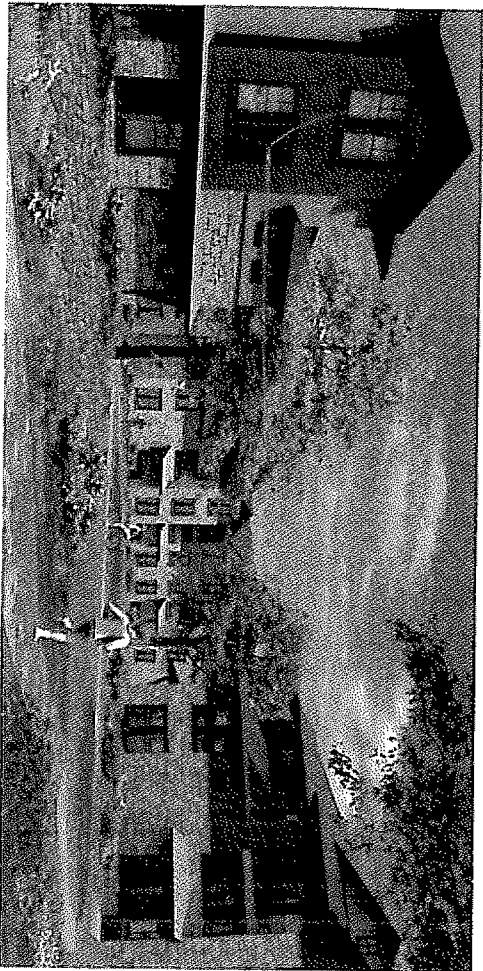
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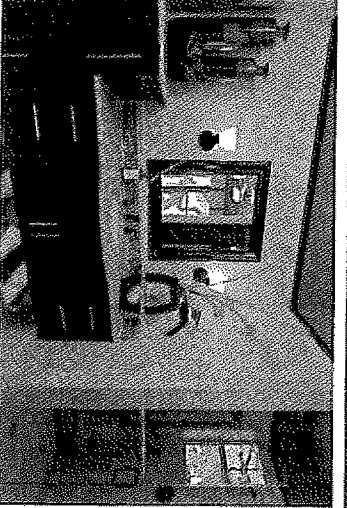
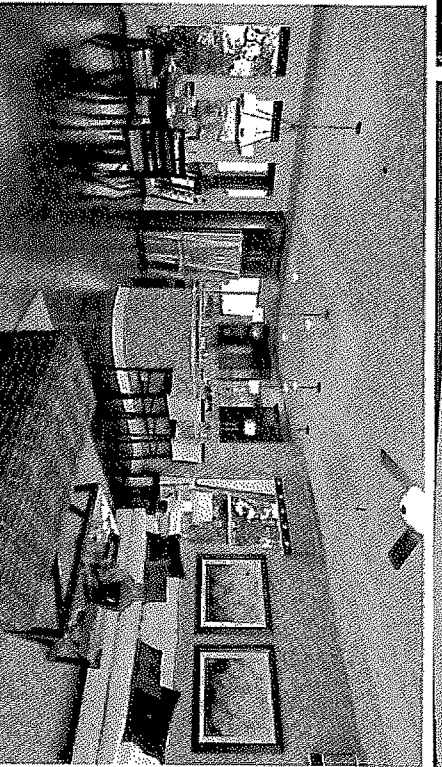
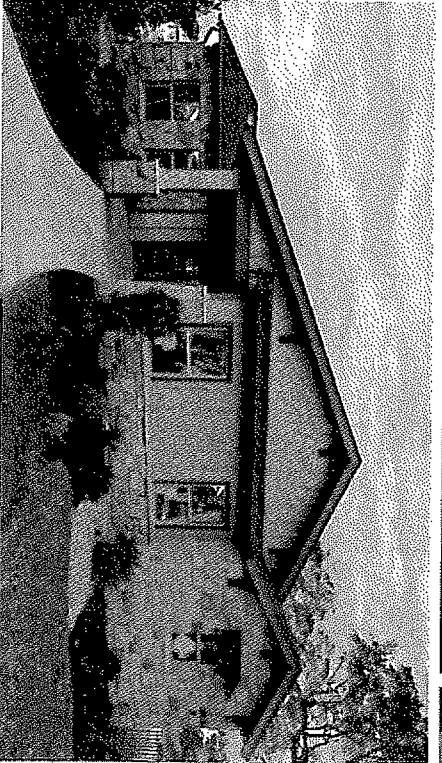
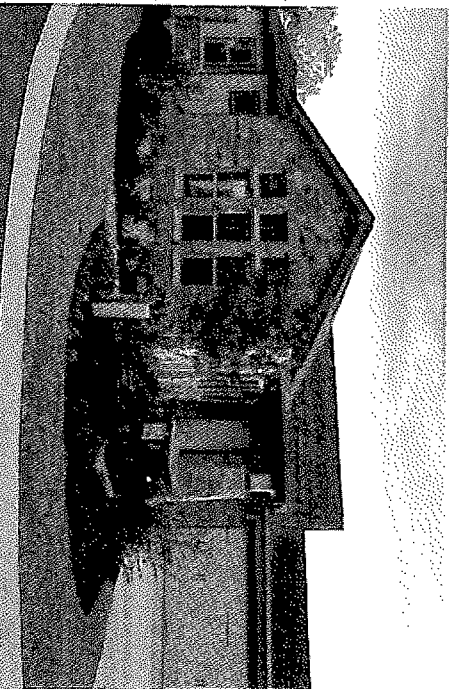
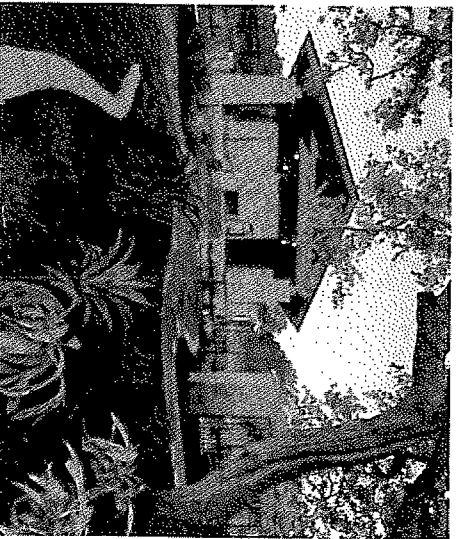
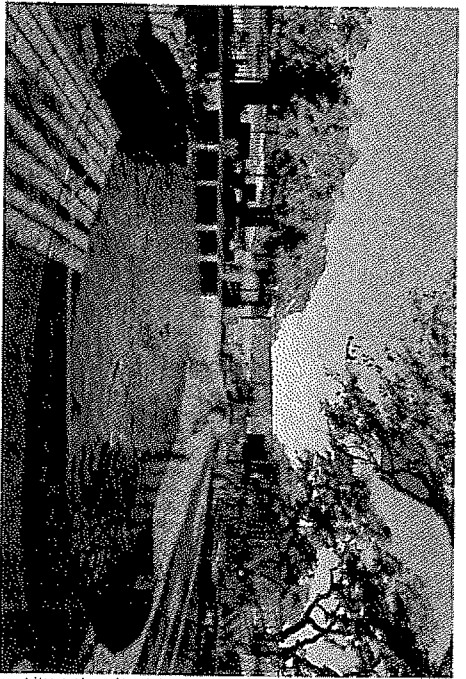
Morningside

Bee Cave, Texas

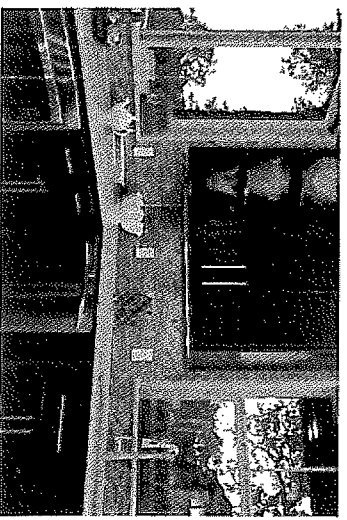


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4



Spillman Ridge
AT FALCONHEAD
ASHCREEK
H O M E S
Creative Communities



5

DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Development Agreement ("Agreement") is between the Village of Bee Cave, Texas ("the Village"), a general law municipality located in Travis County, Texas and Kenneth C. Margolis, Trustee ("Owner").

INTRODUCTION

Owner owns or controls approximately 36 acres of land (known as the "Land") located within the extraterritorial jurisdiction ("ETJ") of the Village locally known as Morningside PUD ("Morningside"). Morningside is more particularly described on Exhibit A. Morningside was originally approved as a planned unit development by the City of Austin, Texas on October 3, 1985 and was originally in that City's jurisdiction. A copy of the approved planned unit development is attached in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The City of Austin subsequently released Morningside from its ETJ. It presently is within the ETJ of the Village.

Owner and the Village wish to enter into this Agreement, provide an alternative to the Village's typical regulatory process for development, encourage innovative and comprehensive design, provide certainty of regulatory requirements throughout the term of this Agreement and ultimately result in annexation of Morningside to the Village.

Owner and the Village agree to work with each other in good faith to enhance and preserve the general area for the citizens of the Village and surrounding areas. Such cooperation shall include development of the Land in a manner which respects the environmental and aesthetic sensitivity of the Village.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the parties agree as follows.

ARTICLE I DEFINITIONS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement or in the Village's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Agreement: This Development Agreement between the Village of Bee Cave, Texas and Owner.

Village Administrator: The Village Administrator of the Village.

Effective Date of this Agreement: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

ARTICLE II MASTER DEVELOPMENT PLAN

Section 2.01 Phased Development. Owner may develop Morningside in phases. At the time of initial development, Owner may, in its discretion, submit a phasing plan which may be modified from time to time. The Village acknowledges that areas not then under active development may remain in use for agricultural lands or ranching purposes.

Section 2.02 PUD Plan; Approval of Exception. The Village hereby confirms its approval of the Morningside PUD Plan as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The Village acknowledges that the PUD Plan complies with the Village's Comprehensive Master Plan, as amended; approves the land uses, densities, building height, parking provisions, landscaping provisions, setbacks, impervious cover, exceptions, utility and roadway alignments and sizing and other matters shown on the PUD Plan, and confirms that the PUD Plan has been approved by all requisite Village departments, boards and commissions of the Village. It is understood that the applicant must file the necessary preliminary plats and final subdivision plats to comply with the PUD Plan and ordinances, as modified by this Agreement, and state law and that such applications will be approved by the Village. With respect to the Morningside PUD, the Owner agrees to comply with architectural standards and building materials that are set forth in the Village's proposed Comprehensive Master Plan, draft dated May, 2000. In addition, the Village approves in principle the development of the lands for a broader range of mixed uses, including residential, subject to the criteria outlined in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06).

Section 2.03 Road Dedication. Notwithstanding the Village's approval of the Morningside PUD as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), it is the intent of the Owner to work with the Village prior to site development, to ensure that the road pattern complements the Village's overall road plans. It is not presently the intent of the Owner to dedicate Sesame Street as shown in Exhibit B. Owner agrees, instead of developing Sesame Street as shown in Exhibit B, (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), to dedicate 50% of a new road elsewhere within Morningside to link adjacent properties, as long as the new road does not unreasonably adversely impact Owner's ability to develop Morningside for the intended purpose and the overall developable area of Morningside is not reduced from that shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and described in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06). The exact alignment of any new road will be determined through discussions with Village staff and/or Board or Alderman prior to submission of the final plat, neither of which shall unreasonably withhold their approval.

Section 2.04 Review Process. The Village acknowledges that Owner may elect to proceed with the development of Morningside within a compressed time schedule, and that efficient Village reviews are necessary for the effective implementation of Owner's development program. Therefore, the Village agrees that it will review and respond with substantive comments or approval to all construction and development applications and any requests for approvals under this Agreement within the shorter of sixty (60) days or any time frames established by any statutory or internal Village timeframes for development reviews which may be extended for a reasonable time under extraordinary circumstances beyond the control of the Village. If the Village fails to respond to an application within such time frame, the application will be deemed to have been approved as submitted unless beyond the control of the Village. The Village further agrees that if, at any time, Owner believes that an impasse has been reached with the Village staff on any development issue affecting Morningside, Owner may immediately appeal to the Village Administrator for a resolution and that the Village Administrator's decision is immediately appealable to the Village Board of Alderman at its next regularly scheduled Village Board of Alderman meeting. The Village will post the items in a timely manner in accordance with applicable law.

Section 2.05 Term of Approvals. The PUD Plan will be effective for the term of this Agreement, including any renewals as provided by Section 5.01.

Section 2.06 **Amendments.** Modifications to the PUD Plan may become desirable due to changes in market conditions or other factors. Owner may make minor changes to the PUD Plan upon written notification to the Village Administrator. Minor changes shall include: adjustments to the location of public roads, buildings, driveways and parking areas, or lot lines; adjustments to the number of stories, as long as the 4 story limit is not exceeded; or adjustments to the relative mix of office and retail square footages, as long as the total building square footage does not exceed 362,100 sq. ft. and as long as the total impervious cover is 35% or less of the total site area of Morningside. In the event of a major amendment, or the introduction of residential uses, the development criteria shall be as stated in Exhibit C and the revised plan shall require approval by the Village Board of Alderman, which approval will not be unreasonably withheld or delayed.

Section 2.07 **Building Code Compliance.** Permanent structures constructed within Morningside shall comply with the Southern Building Code adopted by the Village. Such code as it applies to Morningside shall be limited to health and safety issues and shall apply uniformly to all other property within the corporate limits of the Village. The Village shall provide timely inspections and shall provide adequate staff and resources so as not to unreasonably delay any construction activities within Morningside.

Section 2.08 **Prohibited Uses.** Unless authorized by specific action of the Board of Alderman, the industrial uses outlined in Section 3.17.4 of the Village Zoning Ordinance, as such ordinance exists on the Effective Date shall be prohibited.

Section 2.09 **Easements and Rights-of-Way.** The Village's Comprehensive Master Plan, now in the process of planning and adoption, provides for a hiking and jogging trail through the Land, as shown on Exhibit D. When the Village is ready to construct the hiking and jogging trail Owner will provide an easement to the Village, in the approximate location shown on Exhibit D, in a form reasonably satisfactory to the Village's Attorney. The easement shall contain language by which the Village shall assume all responsibility for claims, damages or causes of action of any nature arising from the easement and shall require the Village to maintain the easement. The use of the easement shall be limited to pedestrian uses and shall prohibit motorized vehicles. The location of the easement on Exhibit D is conceptual only and its exact location shall be determined at the time of final plat approval. The exact location of the connecting points of the easement with adjacent properties shall be determined through discussion between the Owner, the Village and property owners to the north and south. The easement shall have a maximum width of ten (10) feet, unless the terrain is such that more than ten (10) feet is required for a reasonably useful trail, in which case the parties will use good faith to agree on a wider easement as necessary to accomplish the intended purposes. The cost of preparation of the easements, including its metes and bounds description, shall be borne by the Village.

ARTICLE III ANNEXATION

Section 3.01 Annexation.

a. Owner agrees to petition for annexation of the Land when the Land becomes contiguous to the Village, or when the first building permit for a structure on the Land is issued, whichever occurs last. Simultaneously, with such annexation, the subject lands shall be zoned to permit the mixed land uses as approved. The Village shall not alter such zoning or such zoning classification as it applies to the Land during the term of this Agreement, without the written consent of Owner or its successors or assigns.

b. Contemporaneously with the annexation by the Village, the Village will zone any undeveloped property on the subject lands consistently with the land uses as approved and will zone all developed property consistently with the land uses in existence on the date of the annexation as shown on the approved Plan.

ARTICLE IV AUTHORITY AND VESTING OF RIGHTS

Section 4.01 Authority. This Agreement is entered into, in part, under the statutory authority of Section 42.044 of the Texas Local Government Code, "Creation of Industrial District in Extraterritorial Jurisdiction", which authorizes the Village to make written contracts with the owners of land within an industrial district, establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. In accordance with the authority granted to the Village under Section 42.044, Texas Local Government Code, the Village hereby designates the Morningside as an industrial district, which includes not only industrial uses, but also areas in which tourist-related businesses and facilities will be located. The parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of Morningside not presently in the Village's corporate limits as provided in this Agreement; authorize certain land uses and development with Morningside; provide for the uniform review and approval of plats and development plans for Morningside; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning after annexation of Morningside.

Section 4.02 Vesting of Rights. This Agreement constitutes an application by Owner for the subdivision and development of Morningside, and initiates the subdivision and development permit process for Morningside. The Village acknowledges that Owner has vested authority to develop Morningside in accordance with this Agreement. It is the intent of the Village and Owner that these vested development rights include the character of land uses, the number of square feet or living unit equivalents, the general location of roadways, the design standards for streets and roadways, and development of Morningside in accordance with the standards and criteria set forth in this Agreement, and only the Village ordinances in existence as

of June 13, 2000, as set out in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06), unless otherwise expressly set forth in this Agreement]. In the event of a conflict between this Agreement and the Village's ordinances or requirements, the terms of this Agreement shall prevail.

Section 4.03 Landowner's Right to Continue Development. In consideration of Owner's agreements, the Village agrees that it will not, during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within The Project or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within Morningside. The preceding sentence does not apply to temporary moratoriums uniformly imposed throughout the Village due to an emergency constituting imminent threat to the public health or safety, provided that such a moratorium will continue only during the duration of the emergency.

ARTICLE V TERM, ASSIGNMENT AND REMEDIES

Section 5.01 Term. The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the Village and Owner. Upon the expiration of fifteen (15) years, this Agreement may be extended, at Owner's request, with Village Board of Alderman approval, for up to one successive five-year period.

Section 5.02 Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the Village and Owner or may be terminated or amended only as to a portion of Morningside by the mutual written consent of the Village, the owners of the portion of the Land affected by the amendment or termination and Owner.

Section 5.03 Assignment.

a. This Agreement, and the rights of Owner, in whole or in part, may be assigned by Owner to a subsequent developer of all or a portion of Morningside upon forty-five (45) days written notice to the Village. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee.

b. If Owner assigns its rights and obligations as to a portion of Morningside, then the rights and obligations of any assignee and Owner will be severable, and Owner will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the Village may pursue all remedies against that nonperforming developer, but will

not impede development activities of any performing developer as a result of that nonperformance.

c. This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases any portion of Morningside.

d. Upon Owner's request and at Owner's expense and subject to Village's approval, Village and Owner may elect to seek legislative validation of this Agreement and statutory authorization to extend the term of this Agreement beyond fifteen (15) years.

Section 5.04 Remedies.

a. If the Village defaults under this Agreement, Owner may enforce this Agreement by seeking a writ of mandamus from a Travis County District Court, or may give notice setting forth the event of default ("Notice") to the Village. In addition, if the Village fails to cure any alleged default within forty-five (45) days from the date the Village receives the Notice, Owner may terminate this Agreement by providing written notice to the Village as to all of the Land owned by Owner, or as to the portion of Morningside affected by the default and/or Owner may pursue any injunctive relief from a court of proper jurisdiction.

b. If Owner defaults under this Agreement, the Village shall give Notice to Owner. If Owner fails to commence the cure of an alleged default specified in the Notice within a reasonable period of time, not less than forty-five (45) days, after the date of the Notice, and thereafter to diligently pursue such cure to completion, the Village may terminate this Agreement or seek injunctive relief from a court of proper jurisdiction.

c. Each party waives any action for damages against the other except for the recovery of attorneys' fees, as per subparagraph d below.

d. If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

Section 5.05 Cooperation.

a. The Village and Owner each agree to cooperate with each other as may be reasonably necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably necessary.

b. The Village agrees to cooperate with Owner at Owner's expense, in connection with any waivers, permits or approvals Owner may need or desire from the City of Austin, Travis County, TNRCC, United States Fish & Wildlife Service or any other regulatory authority in order to carry out the Plan.

c. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Owner and the Village agree to cooperate in the

defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement. Each party shall pay their own expenses and attorney's fees.

d. Owner or the Village may initiate mediation on any issues in dispute and the other party shall participate in good faith. The cost of mediation shall be a joint expense.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Village: Village of Bee Cave
13333-A Hwy. 71 West
Bee Cave, Texas 78738
Attn: Village Administrator

With Required Copy to: Mike Willatt
Village Attorney
2001 N. Lamar
Austin, TX 78705

Owner: Kenneth C. Margolis, Trustee
c/o Goldeneye, Inc.
2000 West Loop South, Suite 1080
Houston, TX 77027
Attn: Barry Lewis

With Required Copy to: David Armbrust
Armbrust Brown & Davis, LLP
100 Congress Avenue, Suite 1300
Austin, TX 78701

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. Owner may, by giving at least five (5) days' written notice to the Village, designate additional parties to receive copies of notices under this Agreement.

Section 6.02 Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 6.03 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

Section 6.04 Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

Section 6.05 Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable Village ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

Section 6.06 Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday,

Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Section 6.07 Authority for Execution. The Village certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with Village ordinances and Comprehensive/Master Plan. Owner hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Owner.

Section 6.08 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A - Metes and Bounds Description

Exhibit B - Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)

Exhibit C - Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06

Exhibit D - Hike and Jogging Trail

The undersigned parties have executed this Agreement on the dates indicated below.

VILLAGE OF BEE CAVE

By: Caroline L. Murphy
Printed Name: Caroline L. Murphy
Title: Mayor
Date: 7-25-2000

ATTEST:

Sherry Mashburn
Printed Name: Sherry Mashburn
Title: Village Secretary

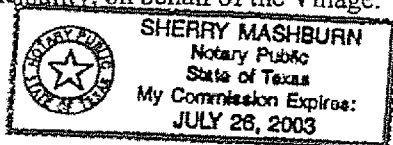
OWNER

Barry M. Lewis
Kenneth C. Margolis, Trustee
By: Barry M. Lewis, Authorized Agent
Date: 7-25-2000

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Caroline L. Murphy, Mayor of the Village of Bee Cave, Texas, a general law municipality, on behalf of the Village.

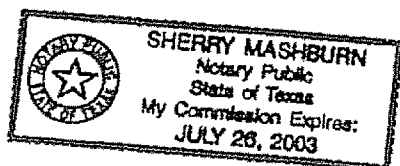


Sherry Mashburn
Notary Public Signature

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Barry M. Lewis on behalf of Kenneth C. Margolis, Trustee.



Sherry Mashburn
Notary Public Signature

EXHIBIT B

DEVELOPMENT CRITERIA: ORIGINAL MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN (OFFICE AND RETAIL)

Development of the Morningside PUD is permitted as set out on the attached site plan prepared by Espey, Huston & Associates, Inc., dated April 1985 and revised August 1987, which provides for the following development:

- * Minimum Developable Area 20.84 Acres
- * Total Developed Square Footage 362,100 sq. ft.
- * Proposed Uses:
 - o Office 321,300 sq. ft.
 - o Retail 40,800 sq. ft.
- * Parking 1207 spaces
- * Maximum Buffer/Drainage Easement 15.33 acres

In addition to the development criteria set out on the Morningside site plan, the following criteria shall apply:

1. Architectural standards and building materials as set forth in Village's proposed Comprehensive Master Plan, draft dated May, 2000.
2. The only development ordinances that the developer shall have to comply with will be those that currently apply to the Village's ETJ, namely the development will comply with the Village's current subdivision, sign and water quality ordinances as they exist on June 13, 2000. In addition, Owner agrees to comply with the Lighting Ordinance, as it exists on June 13, 2000.

EXHIBIT C

DEVELOPMENT CRITERIA: MORNINGSIDE DEVELOPMENT WITH RESIDENTIAL OR OTHER MAJOR MODIFICATIONS TO THE MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN REQUIRING VILLAGE BOARD APPROVAL AS SET OUT IN SECTION 2.06

In addition to the uses contemplated by the original Morningside PUD (Exhibit B – Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), the development of a mixed-use community including townhouses, not to exceed 15 dwelling units per acre on the net 20.84 developable acres, shall be permitted. Office, retail, townhouse/condominium residential shall be permitted in any mix, so long as the total impervious cover does not exceed 35%.

The Land Use Equivalency chart on the following page illustrates the square footage and impervious cover percentages with the property being developed as office only, retail only, or townhouses only, purely for illustration purposes. It also illustrates the impact of a sample mixed-use development plan using 35% office, 15% retail and 50% townhouses with an impervious cover below the maximum 35% as contemplated above. This sample is presented for illustrative purposes only and the actual mix could vary.

The following criteria shall apply in the event that Morningside is developed to include residential uses, or if major changes are made to the PUD plan set out in Exhibit B as provided in section 2.06 of this agreement:

- Minimum Developable Area 20.84 Acres
- Maximum Buffer/Drainage Easement 15.33 acres
- Impervious cover up to, but not exceeding 35% of the total site area (including public roads)
- Uses can be distributed either in single use or multi-use buildings, such as retail first floor, office second floor.
- Size of buildings - maximum footprint of each separate structure: 45,000 sq. ft. for office use and 15, 000 sq. ft. for retail use and maximum height of four (4) stories.
- Connections between buildings, such as enclosed walkways or porte cocheres, shall be excluded from the calculation of the maximum building footprint. Such connections between buildings will not result in the buildings being considered as one structure or footprint.

- The Owner agrees to comply with the following Village ordinances as they exist on June 13, 2000, relating to a mixed use development as set out in this Exhibit:
 1. Article 9.1 Sign Regulations
 2. Article 3.3 Landscaping Requirements
 3. Article 10.1 Off-Street Parking
 4. Article 3.4 Outdoor Lighting
 5. Article 11.1 Nonpoint Source Pollution Control
 6. Ordinance 87-2 Subdivision Ordinance
- Architectural standards and building materials as set forth in the Village's proposed Comprehensive Master Plan, draft dated May 2000.

Sample Land Use Equivalencies - For Illustrative Purposes Only				
Existing PUD				Impervious Cover (% of total area)
Building Sq. Ft.				
Office	321,300.0 sq. ft.			
Retail	40,800.0 sq. ft.			
Total	362,100.0 sq. ft.			
Coverage				
Building	107,800.0 sq. ft.	2.47 ac.		
Parking, Structures & Driveway	438,541.7 sq. ft.	10.09 ac.		
Total	547,231.7 sq. ft.	12.55 ac.		34.7%
Same Sq. Ft. - Retail Only ⁽¹⁾				Impervious Cover (% of total area)
Building Sq. Ft.				
Retail (50% 1 story & 50% 2 story)	362,100.0 sq. ft.			
Total	362,100.0 sq. ft.			
Estimated Coverage				
Building	241,400.0 sq. ft.	5.5 ac.		
Estimated Parking, Structures, Driveways	593,217.4 sq. ft.	13.4 ac.		
Estimated Total	834,617.4 sq. ft.	18.9 ac.		53.0%
Same Sq. Ft. - Professional Office Only ⁽²⁾				Impervious Cover (% of total area)
Building Sq. Ft.				
Office (2 story)	362,100.0 sq. ft.			
Total	362,100.0 sq. ft.			
Coverage				
Building	181,050.0 sq. ft.	4.15 ac.		
Estimated Parking, Structures, Driveways	438,541.7 sq. ft.	10.09 ac.		
Estimated Total	620,591.7 sq. ft.	14.25 ac.		39.4%
Medium Density/Townhouses Only				Impervious Cover (% of total area)
Townhouses				
@ 15 units/acre ⁽³⁾	313 units			
Average unit size	2300 sq. ft. ⁽⁴⁾			
Coverage				
Buildings	359,950 sq. ft.	8.25 ac.		
Estimated Parking, Driveways ⁽⁵⁾	113,982 sq. ft.	2.52 ac.		
Estimated Total	473,932 sq. ft.	10.77 ac.		30.1%
Sample Mixed Use Development				Impervious Cover (% of total area)
Office				
35% total land area	551,447.82 sq. ft.	12.58 ac.		
at a coverage of	39.4%			
Total Office Coverage	217,270.44 sq. ft.	4.96 ac.		
Parking & Driveways	153,884.48 sq. ft.	3.53 ac.		
Building foot print	63,385.98 sq. ft.	1.46 ac.		
2-story office	125,771.96 sq. ft.			13.75%
Retail				
15% of total land area	236,334.78 sq. ft.	5.43 ac.		
at a coverage of	53.0%			
Total Retail Coverage	125,257.43 sq. ft.	2.88 ac.		
Parking & Driveways	89,028.69 sq. ft.	2.04 ac.		
Building Foot Print	36,229.75 sq. ft.	0.83 ac.		
1 & 2 story retail	54,343.13 sq. ft.			7.55%
Townhouses				
50% of total land area	630,226.06 sq. ft.	14.47 ac.		
at a coverage of	30.0%			
Total Townhouse Coverage	189,067.82 sq. ft.	4.34 ac.		
Parking & Driveways	45,471.42 sq. ft.	1.04 ac.		
Building Foot Print	143,508.40 sq. ft.	3.30 ac.		
No. of Units	125 units			12.00%
Total Mixed Use Coverage	531,595.70 sq. ft.	12.23 ac.		33.74%
Total Mixed Use Development				
Office - 2-story	125,771.96 sq. ft.			
Retail - 50% 1-story & 50% 2-story	54,343.13 sq. ft.			
Townhouses - 125 units @ 2300 sq. ft./unit	287,500.00 sq. ft.			
Total	468,615.09 sq. ft.			

Notes:

⁽¹⁾ Parking required - 1829 parking spaces (1 space / 200 sq. ft. of retail use - assume 10% common areas)

⁽²⁾ Parking required - 1207 parking spaces (1 space / 300 sq. ft. of professional office)

⁽³⁾ Total developable area = 20.84 acres (36.17-15.33 buffer) @ 15 units/acre = 313 units

⁽⁴⁾ Assumes each unit contains a two-car garage

⁽⁵⁾ Assumes 1 space/unit visitor parking and 20' wide double loaded access driveway

EXHIBIT D
HIKE AND JOGGING TRAIL
(from 2000 Comprehensive Plan)

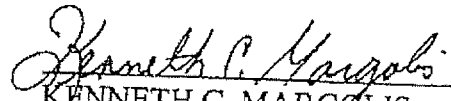
ASSIGNMENT OF AUTHORIZED AGENT

THE STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL PERSONS BY THESE PRESENTS:

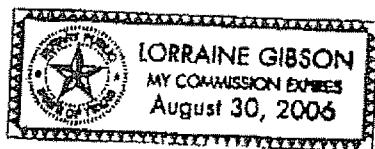
THAT I, KENNETH C. MARGOLIS, TRUSTEE, hereby assign Barry M. Lewis as a authorized agent to sign the First Amendment to the Development Agreement between the Village of Bee Cave, Texas and Kenneth C. Margolis, Trustee and Spillman Development Group, LTD.

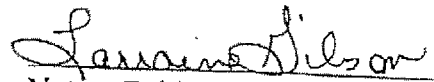
Executed effective as of the 8 day of MAY, 2003.


KENNETH C. MARGOLIS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 8 day of May, 2003 by Kenneth C. Margolis.




Notary Public in and for
The State of Texas

6

1000001994

MORNINGSIDES SUBDIVISION FINAL PLAT

LEGEND

- 1/2" HIGH ROAD (UNLESS NOTED)
- 1/4" HIGH ROAD
- 1/8" HIGH ROAD
- 1/16" HIGH ROAD
- 1/32" HIGH ROAD
- 1/64" HIGH ROAD
- 1/128" HIGH ROAD
- 1/256" HIGH ROAD
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[illegible]

- [illegible]

1. LAND USE AND DEVELOPMENT ORDINANCE SHALL BE GOVERNED BY AND SUBJECT TO THE "MORRISIDE DEVELOPMENT AGREEMENT DATED JULY 25, 2003 AND THE APPLICABLE CITY OF DEER CREEK ORDINANCES IN EFFECT AS OF JUNE 13, 2010.

- [illegible]

EXAMINANT AND/OR ACCESS REQUIRED, IN ADDITION TO THOSE INDICATED, EXCLUSIVE FOR THE INSTALLATION AND ONGOING MAINTENANCE OF OVERHEAD AND UNDERGROUND FACILITIES AND ONE OR OTHER BUNDLES OF SERVICES BASED ON THE FOLLOWING:

- [illegible]